

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

<b>MICHAEL JORDEN</b>	)	
Claimant	)	
	)	
VS.	)	
	)	
<b>STATE OF KANSAS</b>	)	
Respondent	)	Docket No. <b>1,053,874</b>
	)	
AND	)	
	)	
<b>STATE SELF-INSURANCE FUND</b>	)	
Insurance Carrier	)	

**ORDER**

Self-insured respondent requests review of the November 28, 2011 Award by Administrative Law Judge Rebecca A. Sanders. The Board heard oral argument on March 6, 2012.

**APPEARANCES**

Dan M. McCulley of Junction City, Kansas, appeared for the claimant. Bryce D. Benedict of Topeka, Kansas, appeared for the self-insured respondent.

**RECORD AND STIPULATIONS**

The Board has considered the record and adopted the stipulations listed in the Award.

**ISSUES**

It was undisputed Michael Jordan suffered a work-related injury to his right knee but the parties were unable to agree upon the nature and extent of his disability. Jordan's medical expert provided a 20 percent rating for his right lower extremity and respondent's medical expert provided an 18 percent rating for his right lower extremity. But respondent argued Jordan only has a 2 percent permanent partial disability to the right lower extremity

because his surgery was for a partial medial meniscectomy and the arthritic changes in his knee were not related to the accident.

The Administrative Law Judge (ALJ) found Jorden sustained a 20 percent permanent partial disability to the right lower extremity based upon the authorized treating physician's opinion and rating.

Respondent requests review of the nature and extent of Jorden's disability. Respondent argues that pursuant to the *AMA Guides*<sup>1</sup>, Jorden is limited to a 2 percent permanent partial disability to the right lower extremity because his surgery was for a partial medial meniscectomy. Conversely, Jorden requests the Board to affirm the ALJ's Award.

The sole issue for Board determination is the nature and extent of claimant's disability to his right lower extremity.

#### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Having reviewed the evidentiary record filed herein, the stipulations of the parties, and having considered the parties' briefs and oral arguments, the Board makes the following findings of fact and conclusions of law:

Michael Jorden is the facilities maintenance supervisor for Kansas State University Housing and Dining Services. He supervises the maintenance staff from the resident halls. As a working supervisor, he also does plumbing, some electrical, heating and air-conditioning work as well.

Jorden suffered an accidental injury on September 25, 2009, while he was trying to remove a clog in a floor drain using a power machine with a cable. He was feeding the cable into the drain when he raised up to shove the cable into the drain. Jorden's right knee popped and he had to have co-workers help him get off the floor. He waited a few days before seeking medical treatment but his knee pain persisted and worsened so he then sought treatment.

Initially, Jorden was placed on light-duty work and underwent physical therapy. Jorden's pain persisted and an MRI was performed. He was then referred to Dr. William Jones, an orthopedic surgeon.

Dr. Jones examined and evaluated Jorden on October 29, 2009. He had complaints of pain, swelling and limited motion in his right knee. The MRI revealed an injury to the

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<sup>1</sup> American Medical Ass'n, *Guides to the Evaluation of Permanent Impairment* (4th ed.). All references are based upon the fourth edition of the *AMA Guides* unless otherwise noted.

medial meniscus. On November 18, 2009, Dr. Jones performed an arthroscopy on Jordan's right knee. The surgery included trimming a torn medial meniscus cartilage and cleaning up the articular cartilage damage (chondroplasty) of the medial joint compartment with findings of a complex degenerative tear in the posterior horn of the medial meniscus, widespread grade 2 chondromalacia of the medial femoral condyle and synovitis in the knee.

After the surgery Jordan continued to have pain, swelling and episodes of popping in his knee. An injection of Synvisc provided temporary relief but the pain returned. On February 22, 2010, Jordan returned for a follow-up visit with Dr. Jones regarding his right knee. Dr. Jones noted:

. . . The knee is clearly inflamed today. Apparently, this has been a problem over the last several weeks. The degree of pain, swelling and heat correlates with the length of time that he is in the weight bearing position and with the intensity of his work. The inflammatory findings decrease significantly with rest. The picture is not consistent with infection. At the time of arthroscopy, he was noted to have both meniscal and articular cartilage damage. Articular cartilage damage is progressive. The rate of progression is unpredictable. It is certainly possible that he has had progression of the damage over the past several months. Additional meniscal tearing is unlikely.<sup>2</sup>

On April 28, 2010, Jordan underwent a second arthroscopy of his right knee. Dr. Jones removed multiple articular cartilage loose bodies, a chondroplasty was performed within the trochlear groove and medial compartment as well as a partial medial meniscectomy. Jordan did have some improvement following this procedure but was provided another injection of Synvisc and fitted with a brace.

On November 15, 2010, Dr. Jones determined Jordan had reached maximum medical improvement and released him from treatment. Based on the *AMA Guides*, Dr. Jones determined Jordan had a 20 percent right lower extremity impairment. Dr. Jones agreed that the *AMA Guides* provide a 2 percent rating for a partial medial meniscectomy but he rated claimant at 7 percent which is the rating for a complete medial meniscectomy. Dr. Jones explained that he provided a 7 percent rating because the cartilage damage to Jordan's medial meniscus that he observed during surgery rendered the meniscus virtually nonfunctional or the same as if a complete meniscectomy had been performed. Dr. Jones testified:

The AMA Guide is strictly a guide. And the degree of cartilage damage that I witnessed, probed and treated rendered that meniscus virtually non-functional.<sup>3</sup>

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<sup>2</sup> Jones Depo., Ex. 2.

<sup>3</sup> Jones Depo. at 15.

Dr. Jones compared an x-ray of Jorden's right knee taken in October 2009 and an x-ray taken in September 2010, which revealed an approximate 2 millimeter loss of articular cartilage space. When asked the cause for the loss of cartilage space, Dr. Jones explained:

Q. Okay. And what is the -- what is the medical explanation for why there is a loss of cartilage in that approximately one-year period?

A. There's a number of explanations of which, unfortunately, none are capable of being proven, but it's -- you know, in each particular situation, but we know that injuries upset the delicate balance of the knee, and even if he had preexisting articular cartilage changes, which we don't know, but even if he had that, he was asymptomatic. And once the meniscus -- medial meniscus or lateral meniscus tears, that places significant changes in the mechanics of the knee, which can accelerate the breakdown of articular cartilage. In addition, we know that there are vital chemical changes which take place in the knee, which also accelerate the breakdown of articular cartilage.<sup>4</sup>

Dr. Jones concluded the loss of space resulted in a 14 percent rating for the lower extremity. Combining the 7 percent and 14 percent resulted in the 20 percent rating to the right lower extremity.

Dr. John Gilbert, a board certified orthopedist and independent medical evaluator, examined and evaluated Jorden on July 27, 2011, at the request of respondent. The doctor reviewed Jorden's medical records and also took a history from him. Upon physical examination, Dr. Gilbert diagnosed Jorden as having degenerative joint disease in the right knee with an acute knee strain, a torn medial meniscus and a fair result with meniscectomy and debridement of the knee.

Based on the *AMA Guides*, Dr. Gilbert assigned a 20 percent impairment to claimant's right lower extremity due to narrowing of the medial tibiofemoral joint space to 2 millimeters and a 15 percent due to narrowing of the patellofemoral joint space to 1 millimeter. These lower extremity impairments result in a 32 percent impairment using the Combine Values Chart.

Dr. Gilbert opined that Jorden had a preexisting 16 percent impairment of the right lower extremity due to narrowing of the medial tibiofemoral joint to 3 millimeters noted on the October 29, 2009 films (7 percent) and also narrowing of the patellofemoral joint to 2 millimeters on the October 29, 2009 films (10 percent). Dr. Gilbert concluded that the loss of joint space revealed on the October 2009 x-rays demonstrated preexisting conditions as the accident occurred the month before and could not have caused space loss that quickly. Dr. Gilbert testified:

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<sup>4</sup> *Ibid.* at 18-19.

Q. Okay. What was Mr. Jorden's tibiofemoral and patellofemoral joint spaces on the day before his accident?

A. I would presume that they were the same as they were within a month. Those are long term changes that take months to years to develop, and an X-ray within 30 days of the date of injury would represent essentially the pre-injury state.

Q. Okay.

A. In my opinion.<sup>5</sup>

Dr. Gilbert rated the preexisting impairments at 16 percent to the right lower extremity due to arthritis. After deducting the 16 percent preexisting, Dr. Gilbert determined that Jorden has a 16 percent right lower extremity impairment due to his work-related injury on September 25, 2009.

For the partial medial meniscectomy of the right knee, Dr. Gilbert opined that Jorden had a 2 percent impairment as a result of his work-related injury. Using the Combined Values Chart, the 16 percent and 2 percent result in an 18 percent impairment due to Jorden's September 25, 2009 injury. Dr. Gilbert imposed permanent restrictions of no squatting, crawling, kneeling, and frequent lifting of 20 pounds and occasional lifting of 50 pounds. Dr. Gilbert further opined that Jorden will probably require a right knee replacement arthroplasty in the future as a result of his preexisting and ongoing disease which was aggravated by his September 25, 2009 injury. When further questioned regarding the loss of joint space Dr. Gilbert agreed that it was partially due to the accident.<sup>6</sup>

At the time of the regular hearing, Jorden still had pain that comes and goes, especially when he goes up stairs, down stairs and while walking. He testified that he did not have these problems with his right knee before the accidental injury and he wears a brace the majority of the time.

Respondent argues that Jorden should be limited to compensation for a 2 percent disability to the right lower extremity. Initially, respondent argues that the ratings for arthritis and loss of joint space should be disregarded because those conditions were preexisting and not accelerated by the accident. But both Drs. Gilbert and Jones attributed the additional loss of joint space to the accident. Dr. Jones noted the accident accelerated the changes and loss of joint space and Dr. Gilbert agreed that the accident, at a minimum, partially caused the increased loss of joint space after the accident. The medical evidence refutes respondent's contention.

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<sup>5</sup> Gilbert Depo. at 11.

<sup>6</sup> *Id.* at 33-34.

Respondent next argues that the *AMA Guides* provide for a 2 percent rating for a partial medial meniscectomy. But in this instance, the authorized treating surgeon performed two procedures on Jorden's right knee and explained that the cartilage damage that he witnessed during surgery rendered the medial meniscus non-functional. As a consequence Dr. Jones concluded it was appropriate under the *AMA Guides* to provide a 7 percent rating. The Board finds Dr. Jones' explanation reasonable and persuasive.

The ALJ noted that Dr. Jones, the authorized treating surgeon, had the opportunity to observe Jorden's knee while performing two arthroscopic procedures and during follow-up treatment. Consequently, the ALJ found his 20 percent rating more persuasive than the 18 percent rating from Dr. Gilbert. The Board agrees and affirms.

As required by the Workers Compensation Act, all five members of the Board have considered the evidence and issues presented in this appeal.<sup>7</sup> Accordingly, the findings and conclusions set forth above reflect the majority's decision and the signatures below attest that this decision is that of the majority.

**AWARD**

**WHEREFORE**, it is the decision of the Board that the Award of Administrative Law Judge Rebecca A. Sanders dated November 28, 2011, is affirmed.

**IT IS SO ORDERED.**

Dated this 6th day of April, 2012.

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BOARD MEMBER

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BOARD MEMBER

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BOARD MEMBER

c: Dan M. McCulley, Attorney for Claimant  
Bryce D. Benedict, Attorney for Respondent  
Rebecca A. Sanders, Administrative Law Judge

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<sup>7</sup> K.S.A. 2011 Supp. 44-555c(k).